

1  
2  
3  
4  
5  
6  
7 COMMODITY FUTURES TRADING  
8 COMMISSION,  
9 Plaintiff,  
10 v.  
11 OOKI DAO,  
12 Defendant.

Case No. [3:22-cv-05416-WHO](#)

**ORDER TO SERVE INDIVIDUALS OR  
SHOW CAUSE**

12  
13 Plaintiff Commodity Futures Trading Commission (“CFTC”) filed this suit against the  
14 Ooki DAO, a “decentralized autonomous organization,” and I granted its motion for alternative  
15 service to permit service the online Chatbox and Discussion Forum. [Dkt. No. 17]. Four entities  
16 filed amicus briefs seeking reconsideration of the motion. [Dkt. Nos. 16, 22, 31, 36]. I held a  
17 hearing on the motions for reconsideration, at which the CFTC and the four amici appeared.

18 The CFTC’s theory of service and of liability is that Ooki DAO is an entity comprised of  
19 Token Holders, who vote their tokens to govern the DAO. At the hearing, the CFTC asserted it  
20 knew that some of Ooki DAO’s Token Holders reside and conduct business in the United States  
21 because the two founders of Ooki DAO’s predecessor entity, bZeroX LLC, are Token Holders  
22 who reside in the United States. This was new information to me. Neither the complaint nor the  
23 CFTC’s Motion for Alternative Service mention that the former founders, Tom Bean and Kyle  
24 Kistner, are or have been Token Holders. *See* Dkt. Nos. 1, 11, 13. Neither the Motion for  
25 Alternative Service nor the CFTC’s Opposition to the motions for reconsideration, Dkt. No. 55,  
26 discusses why the CFTC did not serve Bean or Kistner with this complaint, in their roles as Token  
27 Holders of Ooki DAO. Rather, the CFTC argues that it is not required to serve any individuals.

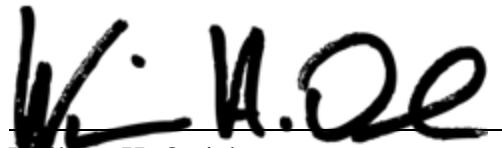
28 I will address in detail the substance of the CFTC’s arguments, as well as the amici’s

1 counterarguments, in my upcoming order on the motions for reconsideration. As will be detailed  
2 in that order, it seems clear in this case that Ooki DAO has actual notice of the litigation. But to  
3 provide the best practicable notice, the CFTC should serve at least one identifiable Token Holder  
4 if that is possible. I will delay entering that order until the CFTC has made that attempt, as  
5 discussed in the next paragraph.

6 The CFTC is now ORDERED to serve Bean and Kistner, in their roles as Ooki DAO  
7 Token Holders, with the complaint and all relevant documents in this case at the earliest time  
8 practicable. If the CFTC is unable to do so, it is ordered to show cause why service is impossible.  
9 The CFTC must file confirmation of service or its response to show cause no later than January  
10 11, 2023.

11 **IT IS SO ORDERED.**

12 Dated: December 12, 2022

13  
14  
15   
16 William H. Orrick  
17 United States District Judge  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28